

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

JAMES ALAN DINA,

Plaintiff,

V.

ANDUENA DOBROSHI, Public Defender,
et al.,

Defendants.

CASE NO. 1:06 CV 2677

JUDGE SOLOMON OLIVER, JR.

MEMORANDUM OF OPINION
AND ORDER

On November 6, 2006, plaintiff pro se James Alan Dina, an inmate at the Belmont Correctional Institution, filed this action under 42 U.S.C. § 1983 against Anduena Dobroschi (Public Defender), City of Cleveland Second District Detectives Rinkos and Hutchenson, Cuyahoga County Common Pleas Clerk Gerald Fuerst and Judge Jeffrey P. Hastings. The complaint seeks damages, on the ground that plaintiff's incarceration and conviction for felony possession of drugs resulted from the violation of his constitutional rights under the Fourth, Sixth and Fourteenth Amendments. For the reasons stated below, this action is dismissed pursuant to 28 U.S.C. § 1915A.

A district court is expressly required to dismiss any civil action filed by a prisoner seeking relief from a governmental officer or entity, as soon as possible after docketing, if the court concludes that the complaint fails to state a claim upon which relief may be granted, or if the plaintiff seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §1915A; *Siller v. Dean*, No. 99-5323, 2000

WL 145167 , at *2 (6th Cir. Feb. 1, 2000).

The Supreme Court has held that, when a prisoner challenges "the very fact or duration of his physical imprisonment, ... his sole federal remedy is a writ of habeas corpus." Preiser v. Rodriguez, 411 U.S. 475, 501 (1973). Further, absent allegations that criminal proceedings terminated in plaintiff's favor or that a conviction stemming from the asserted violation of his rights was reversed, expunged by executive order, declared invalid by a state tribunal, or called into question by a federal court's issuance of a writ of habeas corpus, he may not recover damages for his claim. Heck v. Humphrey, 512 U.S. 477 (1994).

Accordingly, this action is dismissed under section 1915A. Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

January 8, 2007